K

1949. File No. Legal Deptt.

B BRANCH

Subject:— Notifications under the Land Acquisition Act 1894

P-E
P-3

File No. Laq II/49 (N)

Gen. 134

The proposal is to ~~xxx~~ ask the Special Land Acquisition Officer, Ahmedabad, to take all proceedings under the Land Acquisition Act, in respect of all lands to be acquired for the Ahmedabad Education Society. There are for notifications issued under section 6 in respect of the said lands required by the said Society, namely:-

1. G.N. , R.D. No. 3152/45 dated 3-3-1948;
2. - do - No. 3152/45 dated 30-3-1948;
3. - do - No. 3152/45 dated 15-5-1948;
4. - do - No. 3152/45 dated 15-5-1948.;

(a)

Under the first two notifications, as amended by G.N.R.D.No. 3152/45, dated 27-9-1948, the Additional Special Land Acquisition Officer, Ahmedabad, has been appointed to take all proceedings under the Act; under the last ~~xxx~~ two notifications, as amended by G.N.R.D. No.3152/45, dated 1st December 1948, the Special Land Acquisition Officer, Ahmedabad, has been appointed from that date to take all proceedings under the Act. The R.D. has therefore rightly suggested that only the first two notifications may be amended so as to empower the special Land Acquisition Officer instead of the Additional Special Land Acquisition Officer as at present for the purpose.

2. With reference to this proposal the Special Land Acquisition Officer, Ahmedabad, who was consulted by R.D. thinks in para 6 of his note at p. 252 ante that -

> " This amendment of Notification would, however, empower the Special Land Acquisition Officer to act as Collector and take order for acquistion in place of the Additional Special Land Acquisition Officer from the very beginning who would thus have no powers therefore. Consequently all the proceedings so far taken by him (viz. the Addl. S.L.A.O.) including the taking possession of lands would be declared illegal and ultra vires and void. All further proceedings in continuation thereof by the Special Land Acquisition Officer may likewise be declared illegal and vlid."

He therefore suggests further amendment of the notification at p.245 ante in the manner stated in para 7 of his note at ~~xxxx~~ p.253 ante.

3. The view taken by the Special Land Acquisition Officer, Ahmedabad, endorsed by the Collector of Ahmedabad is not correct nor the course suggested by them is legally feasible.

4. As will be observed, G.N., R.D.No. 3152/45, dated ~~the~~ 2.3.1948 and 30.3.1943, before they were amended by G.N.R.D. No.3152/45, dated 27th September 1940, did not specifically provide as to who should take orders for the acquisition of the land. The R.L.A. in his opinion No. 5164 dated 1-6-1948 therefore advised that two officers cannot be given directions for the same case and that it was necessary to direct one of ~~him~~ them to take such orders. Accordingly by G.N., R.D.No.3152/45, dated 27. 9. 1948 the Additional Special Land Acquisition Officer, Ahmedabad, was directed to take orders for the acquisition of the land. It is ~~true~~ true that the Additional Special ~~x~~ Land Acquisition Officer has proceeded in the matter and ~~x~~ in one case has taken possession of the land under section 17 of ~~x~~ the Act. But Government has power in virtue of the powers contained in sections 3(c) and 7 of the Act read with section 21 of the General Clauses Act, 1897, to amend the notification already issued thereunder by asking the Special Land Acquisition Officer to take further steps for the acquisition of the land. This power, however, would not relate back to the date on which the the notification under section 6 was issued but will be exercised from the date on which the amendment will be made from which date also the Additional Special Land Acquisition Officer would not be competent to exercise any power under the notification. It is not, therefore, necessary to amend the notification as suggested by the Special Land Acquisition Officer in para 7 of his note at p. ~~253~~ 253 ante nor is it necessary to amend G.N., R.D.No.3152/45(a), dated 15th May 1948, as suggested by him.

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5. A revised draft notification in place of the draft at p.245 is sent herewith.

6. It is presumed that after the issue of the amending notification No.3152/45,dated the 27th September 1948, the proceedings under G.N., R.D.No. 3152/45, dated 2.3.1948 and 30.3.1948 respectively have been started de novo from section 7 onwards by the Additional Special Land Acquisition Officer, Ahmedabad as advised in R.L.A's opinion No.8493 dated 4.9.1948.

Sd...../ 2/3.

Additional Secretary to Government.

U.R. to R.D.No.2448, dated the 3rd March 1949.

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11. Legal Department.

The R.LA's opinion No. 1687, dated 12 the February 1949 would apply to the facts of the present case. The R.L.A. advised in that opinion as follows:-

> " Since the notification under section 4(1) of the Land Acquisition Act can be severed from the notification applying clause under section 17, that portion of the notification which applies the emergency clause may be cancelled by a separate notification pointing out at the same time that it is being cancelled as the urgency clause could not be applied along with the notofication under section 4(1). In that case Government may order an inquiry under section 40(1) and if on inquiry Government is satisfied that the land is needed for the purpose as provided in that section Government may make a declaration to that effect and take an agreement from the company and issue a notification undesr section 6".

In view of this opinion, the best course to follow in this case would appear to be to cancel the portion in Government Notification Revenue Department, NO.5038/45, dated the 30th August 1947 which applies the emergency clause and to appoint under section 40 an officer to hold an inquiry. A draft notification for the purpose is sent herewith. It should not, however, issue till the temporary injunction is vacated by the Court as advised in R.L.A's opinion No.11813, dated 13th December 1948.

2. The other alternative, as advised in the aforesaid opinion, would be to cancel the notification under section 4 and to issue a fresh one. This alternative also is not available till the temporary injunction is vacated by the court.

Sd/..... 2/3.

Additional Secretary to Government.

U.R. to R.D.No.2446 dated the 3rd March 1949.

DYR.

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5o.

Even though the proposal of the Revenue Department is free from objection, the manner of carrying it ~~&~~ out is not in order. Government Notification, Revenue Department, No.3152/45, dated the 1st December, 1948, is an amending notification and the amendment suggested should be made not in the amending notification but in the principal notification i.e. Government Notification, Revenue Department, No.3152/45, dated the 15th May, 1948 and No. 3152/45(a) dated 15th May 1948. A revised draft is sent for the purpose.

2. As regards the Government Notification, Revenue Department, No. 3152/45 dated 2nd March 1948 and 30 th March 1948 respectively, unless the Special Land Acquisition Officer, (Ahmedabad Education Society Work), Ahmedabad, is appointed under clause (c) of section 3 of the Land Acquisition Act 1894 to perform the functions of a Collector he cannot be directed under section 7 to take orders for the acquisition of land. It would therefore be necessary so to amend the said two notifications as to show that he has also been appointed as the Collector for the purposes of the Act. The required draft notification is sent herewith.

3. The Government Resolutions at pages 1, 3 and 5 may be amended as proposed by Revenue Department. In addition, the Government Resolution at page 3 and the Health & Local Government Department notification dated 29th September 1948 published at page 4479, Bombay Government Gazette part 1 may be amended as follows, namely:-

for the words " Special Land Acquisition Officer, Ahmedabad, for the land acquisition work for the Ahmedabad Education Society" the words " Special Land Acquisition Officer (Ahmedabad Education Society Work), Ahmedabad, " shall be substituted. This would show consistency between the Government

P.T. O.

[redacted] Resolutions and the four notifications proposed to be amended.

Sd/.....19/4.
Additional Secretary to Government.

U.R. to R.D.No. [redacted] 4266, dated the 19th April, 1949.

Submitted for Signature.

DYR.
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5c.

Legal Department.

The full facts of the case are as follows:-

2. By Government Notification, Revenue Department No.3152/45 dated the 2nd March 1948 (page 15, R.D. file 3152/45-II) and 30th March 1948 (page 51, dd) certain lands were declared to be needed for the Ahemdabad Education Society and the direction in the following terms was issued under each of the said two notifications-

" The Special Land Acquisition Officer/ Additional Special Land Acquisition Officer, Ahmedabad is hereby appointed under clause(c) of section 3 of the said Act to perform the functions of a Collector for all proceedings hereafter to be taken in respect of the said lands. He is also directed under section 7 of the said Act to take order for the acquistion of the said lands."

3. The question raised with reference to this direction was whether both the Officers were competent to take land acquistion proceedings. The R.L.A. in his opinion No.5164, dated 1st June 1948 (p.211, R.D. file 3152/45-II) held that two officers cannot be given directions for the same case and that it was necessary to direct one of them i.e. a either the Special Land Acquisition, Officer or the Additional Special Land Acquisition Officer, Ahmedabad, to take such order. The said opinion was reaffirmed in L.D.opinion No. 6267 , dated 5th July 1948(p.191 R.D. file below).

4. With reference to the said two notifications the Revenue Department again raised the question whether the proceedings already taken by one of the two aforesaid officers were valid or proceedings will have to be taken de novo after he is validly directed to take orders for acquistion ;

The Additional Secretary, Legal Department in his opinion No.8493 dated 4th September 1948 (p.205, R.D.file, below) advised as follows -

" Section 7 is of the mandatory character and as there was no specific direction to that effect in the two notifications, none of the Officers was competent to take orders for the acquisition of the said

lands. The proceedings, if any taken, will have to be started de novo from section 7 onward x after the notifications are amended as proposed by Revenue Department."

By Government Notification, Revenue Department No.3152/45, dated 27-9-48(204, R.D.file below), which amended the main notifications No. 3152/45 dated 2nd March 1948 and 30th March 1948, the Additional Special Land Acquisition Officer, Ahmedabad, was directed to take orders for the acquisition of lands.

5. Subsequent to the issue of the amending notification of 27th September 1948, there was a further proposal to entrust the work of the acquisition of the said lands to the Special Land Acquisition Officer, Ahmedabad and not to the Additional Land Acquisition Officer as was directed.

6. With reference to this proposal the Collector of Ahmedabad (p.245 R.D.file below) took the view that it would empower the Special Land Acquistion Officer to take the orders for the acquistion in place of the Additional ~~Spl~~ Special Land Acquisition Officer from the very beginning and that consequently all the proceedings so far taken by him (i.e. Additional Special Land Acquistion Officer) would be declared illegal and ultra vires. The Revenue Department referred the papers to Remembrancer of Legal Affairs for advise. The R.L.A., in his opinion No.2448 dated 3rd March 1949 advised, so far as the Government Notification, Revenue Department No. 3152/45 dated 2nd March 1948 and 30th March 1948 were concerned as follows:-

" By Government Notification, Revenue Department No. 3152/45, dated 27th September 1948 the Additional Special Land Acquisition Officer, Ahmedabad, was directed to take orders for the acquisition of the land. It is ture that the Additional Special Land Acquisition Officer has proceeded in the matter and in one case has taken possession of the land under section 17 of the Act. But Government has power in virtue of the powers contained in section 3(c) and 7 of the Act read with Section

21 of the General Clauses Act, 1897, to amend the notification already issued thereunder by asking the Special Land Acquisition Officer to take further steps for the acquisition of the land. This power, however, would not relate back to the date on which the notification under section 6 was issued but will be exercised from the date on which the amendment will be made from which date also the Additional Special Land Acquisition Officer would not be competent to exercise any power under ~~him~~ the Notification."

It was further observed.

" It is presumed that after the issue of the amending notification No.3152/45 dated the 27th September 1948, the proceedings under Government Notification, Revenue Department No.3152/45, dated the 2nd March 1948 and 30th March 1948 respectively have been started de novo from section 7 onwards by the Additional Special Land Acquisition Officer, Ahmedabad, as advised in R.L.A's Opinion No. 8493 dated the 4th September 1948."

7. By Government Notification, Revenue Department No.3152/45, dated the 9th March 1949, (p.264 Revenue Department file 3852/45-II) the special Land Acquisition Officer, Ahmedabad, was again directed to take orders for the acquisition of the lands notified on 2nd March 1948 and 30 th March 1948). This notification and presumption made by the Remembrancer Of Legal Affairs was communicated to the Collector by Revenue Department.

8. Before the last mentioned amending notification dated the 9 th March 1949 was issued, Government had already passed executive orders orders that the designation of the post of the Special Land Acquisition Officer, Ahmedabad, should be changed to " the Special Land Acquisiti n Officer (Ahmedabad Education Society Work), Ahmedabad; " and that all work in connection with the ~~REQUIRING~~ acquisition of land for the Society should be done by Mr. Dakre who was specially appointed to hold the post. The papers were again referred to the Legal Department and the Additional Secretary in his opinion No.4266 dated the 19th April 1949 pointed out to Revenue Department, that it is necessary to declare under section 3 (e) of the land Acquisition Officer,(Ahmedabad ...

(Ahmedabad Educa ion Society Work), Ahmedabad, as a Collector before he is directed to take orders for the acquisition of lands. The necessary drafts were supplied to Revenue Department amending the same notifications of 2nd March 1948 and 30th March 1948.

9. The Collector of Ahmedabad-

(1) now informs that the presumption at 'x' above is not correct; and

(2) further suggests that in view of Mr. Bakre's appointment, the amending notification Np-3152/45 dated the 9th March 1949 directing the Special Land Acquisition Officer, Ahmedabad, to take orders for acuqisition of lands be cancelled

10. The A Additional Secretary, Legal Department has laready under L.D.U.R. to R.D.No.4266 dated 19th April 1949 supplied the drafts of the amendments amending G.N.R.D.No.3152/45 dated the 2nd March 1948 and 30th March 1948 in order to enable the Special Land Acquisition Officer, (Ahmedabad Education Society Work), Ahmedabad (Mr-Bakre) to continue the work of the land acquisition of the lands concerned. Both the amending notifications namely G.N.R.D. No.3152/45 dated 27th September 1948 and G.N.R.D.No.3152/45, dated the 9th March 1949, which amended the principal notifications namely No.3152/45, dated the 2nd March and 30th March 1948 have merged in the principal notifications and this fact was taken into consideration while supplying the requisite drafts under L.D.U.R. No.4266 dated 19th April 1949 referred to above.

11. The proposal of the Collector of Ahmedabad to refer specifically to the amending notification or to cancel the second amending notification is redundant.

12. The Revenue Department in para 2 of its note at page 1 ante now states that the presumption made in para 6 of the R.L.A's opinion No. 2448 dated the 3rd March 1949 is not correct. Para 6 of the said opinion runs as follows:-

" It is presumed that after the issue of the amending notification No. 3152/45, dated the 27th September 1948, [redacted] the proceedings under G.N.R.D.No. 3152/45, dated the 2nd March 1948 and 30th March 1948 respectively have been started de novo from section 7 onwards by the Additional Special Land Acquisition Officer, Ahmedabad as advised in R.L.A's opinion No. 8493 dated the 4th September 1948."

13. It is not understood why in spite of the specific advice of the Remembrancer of Legal Affairs given in his opinion No. 8493 dated the 4th September 1948 the proceedings were not started de novo by the Additional Land Acquisition Officer, Ahmedabad in these two cases between 27th September 1948 on which date he was validly directed to take acquisition proceedings till the 9th March 1949 on which date the Special Land Acquisition Officer, Ahmedabad, was directed to continue his work.

14. If, as stated by the Revenue Department, the Additional Special Land Acquisition Officer, Ahmedabad, has not started de novo the invalid proceedings already taken by him before the 27th September 1948 on which date he was validly directed to take acquisition proceedings such invalid proceedings cannot now be continued and Mr. Bakre, who is now being directed to take proceedings under section 7 in place of the Additional Special Land Acquisition Officer, Ahmedabad will have to be begin all the proceedings de novo from section 7 onward.

15. In this case no award appears to have been given. But different officers have been directed to take acquisition proceedings from time to time, no steps being taken to regularise the initial invalid proceedings by starting them de novo. In view of the irregularities which

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have occurred in this case on the part of the local authorities in not following the legal advice the only alternative is to validate by legislation the proceedings already taken and to ~~x~~ include the cases in the proposed Ordinance which is proposed to be promulgated to validate similar irregularities which have occurred in ~~x~~ other cases from Ahmedabad and Poona.

Sd/.....5/5.

Additional Secretary to Government

U.R. to R.D. No.4933, dated the 5th May 1949.

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5c.

The Collector's proposal to amend the various notifications for the validation of the proceedings taken by the Additional Special Land Acquisition Officer by substitution of the words" the Additional Special Land Acquisition Officer, Poona," for the words " the Special Land Acquisition Officer, Poona", is misconceived. The proposed amendment will not any way validate the action taken by the Additional Special Land Acquisition Officer. In all cases whether the acquisition proceedings are completed or not, the ~~xxx~~ proper course to adopt now would be to validate them by including them in the proposed validating Act, and in the meanwhile to allow the Additional Special Land Acquisition Officer to continue the proceedings.

Sd/.....18/5.

Additional Secretary to Government.

U.R. to R.D.No. 5562, dated the 19th May 1949.

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5e.

A notification under section 4 is in respect of land Likely to be needed for any public purpose. This declaration is not final. The only provisions which come into operation on the issue of such notifications are sections 4 and 16 of the Act. These provisions restrict the rights of a person interested in the land notified under section 4, and impose upon him a legal obligation not to obstruct an Officer from doing certain things. Under Section 5A of the Act any person interested in any land which has been notified under section 4 may within the period stated object to the acquisition of the land or of any land in the locality.

(1) Kulje Village:- The difficulty pointed by the Land Acquisition Officer is that the said survey numbers namely 60, 62, 64 excluded by the notification from this village do not exist as they were acquired in 1881 for Khadakwasala Lake and are submerged under the lake. This fact alone would not render the notification invalid. The notification sufficiently makes it clear that all the lands in Kulje Village excluding the three S.Nos.are likely to be needed for the public purpose stated. The notification is clear enough to enable a person to know what lands are likely to be needed. The fact that the three survey no numbers which are excluded from the notification do not exist or are submerged under the lake does not in any

does not in any way affect the right of a person to take objection to the acquisition of the land in which he is interested. The argument of the Land Acquisition Officer that Survey Nos. 40, 45, 51, 54, 55, 56, 57, 58, 59, 61, 63, 67, 68, 71, 72, which at present do not exist are by implication included in the notification is not tenable. The said survey numbers were already acquired in 1961 and are submerged under the Lake. It automatically follows that the notification does not cover such survey numbers. In any case no villagers will now be interested in the said survey numbers and three other survey numbers referred to above. The objection taken by Mr. V.B. Gogte, pleader on behalf of villagers of Kudje, to the validity of the notification on that ground is not sustainable.

(2) Ahire Village:- The Land Acquisition Officer, states that S.No.61 has been inadvertently omitted and that Gaothan area has also not been included. If the said survey number and the gaothan area are required for the War Academy site, it will be necessary to notify them under section 4. An erratum as suggested by R.D. would not do.

(3) Kenre Village:- The inaccuracy shown by the L.A. Officer is that Govt. Reserve Forest S.No.14 is impliedly included in the area notified. This is not correct. What belongs to and vests in Govt. need not be acquired. This can be specifically omitted when the final notification is issued on the report of the Collr. The other inaccuracy shown is that requisitioned areas of different survey numbers should have been excluded. These can be omitted from the final notification on the report of the Collr. under section [redacted] 5A of the Act.

(4) Shivane Village:- S.No. 58 lying on village boundary which has not been notified, is stated

to be needed for the project. If so, it will have to be freshly notified under section 4. The remarks applicable to requisitioned areas in the previous sub-para would apply to the requisitioned area in this Village.

(5) Kandawa Dhoude Village:- From the plain reading of the notification Gaothan Dadhanandi is included in the area notified for acquisition since it is not classed amongst those lands which are specifically excluded. An inquiry can therefore be held by the Collr.'

2. As regards the penultimate para. of the Land Acquisition Officer's letter at page p. 149, if it is found that lands under Odhas and Halas are needed for acquisition, they will have to be freshly notified.

3. Generally speaking, before a notification under section 6 is issued, the Provl. Govt. has to satisfy itself after considering the report, made under section 5A(2) that any particular land is needed for a public purpose. It is under this notification that particulars required by sub-section (2) of that section have to be specified i.e. the description of land and its approximate area and where a plan shall have been made of the land, the place where such plan may be inspected. After ascertaining exactly the land required care should be taken to see that particulars required by sub-section(2) of section 6 are specified in the final notification.

Sd/.....16/6.

U.R. to R.D.No. 6786 of the 20th June 1949.

DMR.

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